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NO. 85-332

In the Supreme Court of the United States

OCTOBER TERM 1985

THE PARISH OF ST. BERNARD, ET AL,
Defendants-Petitioners,
VS.
UNITED STATES OF AMERICA,
Plaintiffs-Respondents.

PETITION OF THE PARISH OF JEFFERSON AND JEFFERSON PARISH COUNCIL FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT (CONSOLIDATED CASES NOS 83-3557, 83-3760 and 84-3082)

VOLUME 2

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APPENDIX D

42 U.S.C. §4012(c)

Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures

(c) The Secretary shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) evidenced a postive interest in securing flood insurance coverage under the flood insurance program, and

2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 4102 of this title, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available.

42 U.S.C. §4013(a)

Nature and limitation of insurance coverage; regulations

(a) The Secretary shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance

authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 4012 of this title, including

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this chapter.

42 U.S.C. 406 (a)(b)

Disaster mitigation requirements; nonparticipation in flood insurance program.

Prohibition against Federal approval of financial assistance

(a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Secretary as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

Federal regulations against loans by financial institutions; pre-March 1, 1976 residences not affected; small business concerns; improvements under $5,000; nonresidential farm improvement

(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation prohibit such institutions on and after July 1, 1975, from making, increasing, extending, or renewing any loan secured by improved real estate or mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards, unless the community in which such area is situated is then participating in the national flood insurance program, except that the prohibition contained in this sentence shall not apply to (1) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.

(a) Prohibition against Federal approval of financial assistance

No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Notification of purchaser or lessee of property in flood hazards area of availability of Federal disaster relief assistance in the event of a flood disaster.

In addition to the requirements of section 4104a of this title, each Federal instrumentality described in such section shall by regulation require the institutions described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property.

(As amended Pub.L. 95-128, Title VII, § 703(a), Oct. 12, 1977, 91 Stat. 1144; Pub.L. 98-181, Title IV, § 451(e)(1), Nov. 30, 1983, 97 Stat. 1229.)

44 C.F.R. §61.13 and appendix thereto

§61.13 Standard Flood Insurance Policy.

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in Appendix "A"

hereto ("General Property" and "Dwelling building and Contents") and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in Appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than through the issuance of an appropriate amendatory endorsement, approved by the Administrator as to form and substance for uniform use.

(e) *Oral and written binders.* No oral binder or contract shall be effective. No written binder shall be effective unless issued with express authorization of the Administrator.

APPENDIX A(1)

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof]

DWELLING FORM—INSURING AGREEMENT

Agreement of Insurance Between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we", "our", and "us") and the Insured (hereinafter known as "you" and "your"). Based upon your having paid the correct amount of premium, our reliance on the accuracy of the information and statements you have furnished in the application for this policy about the property to be insured and subject to all the terms of this policy, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and regulations issued by us (Title 44, Code of Federal Regulations), we insure you and your legal representatives against all "Direct Physical Loss by or from Flood" to the insured property as defined in the "Definitions Section" of this Agreement to the extent of the actual cash value of the property at the time of loss but not exceeding (1) the cost of replacing the insured building at the time of loss with material of like kind and quality and (2) the actual cash value of any insured personal property at the time of loss.

Now therfore, in consideration of the foregoing and the mutual promises exchanged herein, we and you agree, further, as follows:

Article I—Persons Insured

We insure only:

A. The named insured and legal representatives;

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Article II—Definitions

"Actual Cash Value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a party of this flood insurance policy.

"Basement" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a mobile home on foundation, subject to Article V(H), and a walled and roofed building in the course of construction, alteration or repair. This policy does not cover more than one building.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to expiration date.

"Coastal High Hazard Area" means an area subject to high velocity waters, including hurricane wave wash and tsunami.

"Declaration Page" is a computer generated summary of information furnished by you in the application for insurance. The declarations page is a part of this flood insurance policy.

"Direct Physical Loss by or from Flood" means any loss in the nature of actual loss of or physical damage evidenced by physical changes to the insured property (building or personal property contents) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is part of this Agreement; and 2. for forty-five days, at another place above ground level, or outside of the special flood hazard area to which any of the property shall necessarily be removed by you in order to protect and preserve it from flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you including the value of your own labor at prevailing Federal minimum wage rates in moving your insured property away from the peril of flood and storing your property at the temporary location shall be reimbursed to you. The term "Direct Physical Loss by or from Flood" shall not include compensation for loss of access, loss of use, loss of profits, or loss resulting from interruption of business, profession or manufacture, or reimbursement for your additional living expenses, incurred by reason of your having to live in rented quarters while the insured building is being repaired or replaced, or allowance for any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair, or other economic loss.

"Doublewide Mobile Home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building and which has axles and wheels

used solely for transportation to the lot or construction sie where it is to be assembled as a nonmoveable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Dwelling" means a building designed for use as a residence for no more than four families.

"Expense Constant": The expense constant is a flat charge per policy term, paid by the Insured to defray the Federal Government's policy-writing and other expenses.

"Expiration Date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the delcaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A-2, above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water ex-

ceeding the cyclical levels which result in flooding as defined in A-1 above.

"Policy" means the entire written contract between you and us; it includes this printed form, the application, and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and Roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Article III—Losses Not Covered

We only provide coverage for direct physical loss by flood which means we do not cover:

A. Losses from other casualties including:

1. Loss caused by theft, loss of profits, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, gradual erosion, or any other earth movement except such mudslides (i.e., -mudflows) or erosion as is covered under the peril of flood.

2. Loss caused by rain, snow, sleet, hail, waterspray, freezing, thawing, the pressure or weight of ice or water, sewer backup and seepage of water unless your property has been, at the same time, damaged by a flood.

3. Water or moisture damage resulting primarily from any condition substantially confined to the insured building or from any condition which is within your control

(including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

B. Losses of the following nature:

1. Loss caused by your failure to use means reasonably accessible to you to save the property from loss resulting from a flood and to preserve the property from loss resulting from a flood and to preserve the property after a flood; however, when the insurance under this policy covers a building, the reasonable expenses incurred by you for the purchase of sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, for the purpose of saving the building due to the imminent danger of a flood loss and preserving the building at the premises after a flood loss, including the value of your own labor at prevailing Federal minimum wage rates, are a covered loss in an amount up to the amount of the minimum building deductible, without the policy's building deductible amount, as provided for at Article VI, being applied to this reimbursement, but being applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph B.1 to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) a general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for

measures to preserve life and property from the peril of flood.

2. A loss which is already in progress as of 12:01 A.M. of the first day of the policy term, or as to any increase in the limits of coverage which is requested by you, a loss which is already in progress when you request the additional coverage.

3. A loss from a flood which is confined to the premises on which your insured property is located unless the flood is displaced over two acres of the premises.

4. A loss caused by your modification to the insured property or the described premises on which the insured property is located, which materially increases the risk of flooding.

5. Loss caused intentionally by you or any member of your household.

Article IV—Property Covered

We will pay for physical damage caused by flood to the building at the property address you have furnished, as well as the contents of the building, if you have purchased contents coverage, and provided you have paid the correct premium for the insurance, as follows:

A. We cover your dwelling, which includes:

1. A residential building, designed for principal use as a dwelling place for no more than four families or, as described in the Application as a residence designed for principal use as a dwelling place for no more than one family, we cover your dwelling unit in a condominium building, along with your insurable tenant in common interest in the building's common elements; provided that, should the amount of insurance collectible under this policy for a loss,

when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of building coverage available for the insuring of single-family dwellings under the Act, then the limits of building coverage under this policy shall be reduced in regard to that loss by the amount of such excess;

2. Additions and extensions attached to and in contact with the dwelling;

3. Building equipment, fixtures and outdoor equipment used in connection with the dwelling while stored inside the dwelling or another fully enclosed building at the property address;

4. Materials and supplies to be used in constructing, altering or reparing the dwelling or another building insured by us at the property address while stored inside a fully enclosed building (i) at the property address or (ii) on an adjacent property at the time of loss, or (iii) in case of another building at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the building during flooding (the flotation out of the building shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this policy).

5. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the dwelling, including additions to the dwelling; to the extent you exercise this option, you reduce the amount of insurance available to cover loss relating to A(1)(2)(3) and (4), above,

to the dwelling and this option may not be chosen so as to extend coverage to buildings: (i) occupied, rented or leased in whole or in part for dwelling purposes (or held for such use), or (ii) used in whole or in part for personal or commercial manufacturing or farming purposes (or held for such uses), or (iii) which are boathouses.

B. We cover your Personal Property as contents incidental to the occupancy of the building as a dwelling under the policy, subject to "C" below, and that belonging to members of your family in your household and, at your option within the limits of contents coverage purchased for personal property loss, guests' and servants' perrsonal property and the personal property of others for which you may be responsible—all while stored within a building at the property address. Personal property in the open and not stored in a building shall not be covered against loss by flood under this policy. However, personal property located in buildings having in place two or more rigid walls and a fully secured roof are covered if the contents are secured to prevent flotation out of the building during flooding; the flotation out of the building during flooding of any such contents shall be deemed by you and us to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation. At your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover personal property, this policy will also cover:

1. Loss to improvements, alterations, and additions made by you, as a Tenant, to an insured building at the property address;

2. If you are an individual condominium unit owner, loss to the interior walls, floors,a nd ceilings of your unit that are not otherwise covered under a condominium association policy.

C. Limitation: As a limitation on "B", above, we shall not reimburse you for loss in any one flood as to the following personal property to the extent the total loss of such property exceeds $250.00: paintings, etchings, pictures, tapestries, art, glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum and furs or any article containing fur which represents its principal value. In the case of personal property owned by you in a condominium building, as a dwelling unit owner, as well as in common with other dwelling unit owners, should the amount of insurance collectible underr this policy for a loss, when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available for the insuring of single-family dwelling owners under the Act, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

D. Debris Removal: Within the limits of your coverage, we cover any expense you incur, including the value of your own labor at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a flood.

E. Demolition Coverage: Within the limits of your coverage, you may apply all or part of the proceeds of any flood insurance claim you make under this policy toward the expenses you incur in removing damaged portions of

the insured building from the property location following a flood loss.

Article V—Property not Covered

We do not cover and will not pay for damage to or loss of any of the following:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records and contents used in connection with any incidental commercial occupancy or use of the building.

B. On and after October 1, 1982, newly constructed or substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boat houses or other similar structures or buildings into which boats are floated or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces, outside and foundation walls of the building.

E. Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not

licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. Enclosures, contents, machinery, building components, equipment and fixtures located at an elevation lower than the lowest elevated floor of an elevated building (except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the elevated building), including a mobile home; finished basement walls, floors, ceilings and other improvements to a basement having its floor subgrade on all sides, and contents, machinery, building equipment and fixtures in such basement areas; except that, as to this subparagraph (F), coverage is provided in basement areas and in areas below the lowest elevated floor of an elevated building for sump pumps, well-water tanks, oil tanks, furnaces, hot waterheaters, clothes washers and dryers, food freezers, air conditioners, heat pumps and electrical junction and circuit breaker boxes; and coverage is also provided in basement areas and in areas below the lowest elevated floor of an elevated building for stairways and staircases attached to the building which are not separated from the building by elevated walkways.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of

earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors or that otherwise does not meet the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones VI-V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

K. A building, and its contents, newly constructed or substantially improved on or after October 2, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resourses System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

Article VI—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the policy.

B. The loss deductible shall apply separately to each building loss and personal property (contents) loss including, as to each, appurtenant structure, debris removal, and any reasonable expenses incurred after a flood under Article II or Article III in connection with the preservation and saving of insured property from flood or from the imminent danger of flood.

C. The amount of the deductible for each loss occurence is determined as follows: We shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this insurance or when you raised the deductible by endorsement.

D. In the case of reasonable expenses incurred pursuant to Article II in the temporary removal of an insured mobile home or insured personal property from the described premises and away from the peril of flood, the amount of the deductible shall be $50.00.

Article VII—Replacement Cost Provisions

Subject to Article VI and the limits of building coverage you have purchased, these provisions shall apply only to a Single Family Dwelling which is covered under this policy. Outdoor antennas and aerials, carpeting, awnings, appliances and other outdoor equipment, all whether attached to the insured building or not, are excluded from the replacement cost coverage. For purposes of this Article VII, a single family dwelling qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your building for either (1) 80% of the calendar year immediately preceding the loss or (2) 80% of

the period of your ownership of the insured building, if less than one calendar year immediately preceded the loss. For purposes of this Article, the replacement cost provisions do not apply to a condominium unit within a vertical buildingg having one or more condominium units in it not contigous to the ground. Under this Article:

A. If at the time of loss of the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, our liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part thereof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, we shall not be liable for any loss under paragraph A or subparagraph B-2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brough about by these provisions.

G. These Replacement Cost Provisions do not apply to any mobile home or personal property (contents) covered under this policy, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your dwelling sustains a total loss or if we should pay you the entire building loss proceeds under these replacement cost provisions, there is no requirement that you rebuild the building at the insured property address.

Article VIII—General Conditions and Provisions

A. Pair and Set Clause: If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represent the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. Concealment, Fraud: We will not cover you under this policy, which shall be void, nor can this policy be renewed or any new flood insurance coverage be issued to you if you have sworn falsely, or willfully concealed or misrepresented any material fact, or done any fraudulent act concerning this insurance (See "F," below). In addition we will not cover you under this policy, which shall be void, in the event you have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a policy to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see "G," below).

C. Other Insurance: We shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by us upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. Demandments, Waivers, Assignment: This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action

we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of (1) a contents only policy and (2) a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title without the consent of the Administrator.

E. Cancellation of Policy By You:

1. You can cancel this policy at any time but a refund of premium money will only be made to you when:

a. You cancel because you have transferred ownership of the insured property to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you which apply to the unused portion of the policy's term, pro-rata but with retention of the expense constant.

b. You cancel because we have determined that your property is not, in fact, in a special flood hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to P.L. 93-234, § 102; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations, but with retention of the expense constant.

c. You cancel a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is:

(i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and we have received a written concurrence in the cancellation from any mortgagee of which the NFIP has actual notice, or (ii)

you have extinguished the insured mortgage debt and are no longer required by the mortgage to maintain the coverage.

Refund of any premium, under this subparagrah "c", shall be on a short-rate basis.

F. Voidance, Reduction or Reformation of the Coverage By Us:

1.Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy, in which case the policy is void from its inception date;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, you shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. In the event you or your agent have (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant

to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the sumission of any claim brought under the policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (inclusing the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

e. The premium you submit is less thatn $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

2. Reduction of coverage limits or reformation. In the event that the premium payment received by us is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by you or your agent on the application, renewal, endorsement, or other form (whether evident or not) resulting in insufficient premium being received by us for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discoverd by us prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of thepolicy, for the amount of premium received; provided, you may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by us prior to any loss under the policy shall result in coverage being provid-

ed for the loss up to the additional amount of coverage requested by you. The application of the insufficient premium recieved to the provision of flood insurance coverage shall be made as follows:

a. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, you shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

b. In the event that both building coverage and contents coverage have been requested, we shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and you shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium recieved, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverage to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by you, any such excess of apportioned premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance request for the other coverage is obtained;

c. Provided, however, under this subsection (2.)(i) as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee) up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) If the insufficient premium or other rating error is discoverd by us at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

a. You or your agent have sworn falsely or fraudulently or willfully concelaed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case tis entire policy shall be void as of the date the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

b. Provided (ii) a., above does not apply, you remit and we receive the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within thirty (30) days from the date we give you written notice of additional premium due in which case the policy shall be reformed , from its inception date, to provide flood insurance coverage to you in the amounts of coverage intitially requested. Silence or other failure to remit the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to you. Provided, however, under this

subsection "B" as to any mortgagee (or trustee) named in th epolicy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only off the mortgagee (or trustee) named in the policy. we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice ot the mortgagee (or trustee). Provided, further, we are under no obligation to send you any written notice of premium due under this subsection.

G. Policy Renewal: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declaration Page" which is attached to the policy. We are under no obligation to send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part. We are under no obligation to assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy which we send to you. "Policy changes" includes the addition by you of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any successive policy term is received by us at the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to Article VIII (F.), above. The renewal premium payment shall be deemed to be received by the

NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days following the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date. In all other cases, whether the renewal premium payment is received by the NFIP after the expiration date of this policy or not, this policy shall be deemed terminated as of the expiration date of the last policy term for which the premium payment was timely received by the NFIP and, in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

In connection with the renewal of this policy, you will be requested during the policy term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the policy being renewed, we have extablished a business procedure for mailing renewal notices to assist insureds in meeting their responsibility. Regarding our business procedure, evidence

of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent application or other appropriate form (received by the NFIP prior to the mailing of the renewal notice by us), does, in all respects, for purposes of the NFIP presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice. However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of it being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notifies us no later than one year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstances, we shall mail a second bill providing a revised due date, which shall be thirty days after the date on which the bill is mailed. If the renewal payment is received by such revised due date, the policy shall be renewed as of the date on which the prior policy would have expired. If the renewal payment is requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the policy shall remain an expired policy as of the expiration date prescribed on the policy.

H. Alterations and Repairs: You may, at any time, make alterations, additions and repairs to the insured property and complete structures in the course of construction. Consistent with your obligation to protect insured

property damaged by a flood from further damage, as set forth in "I", below, you may also—following a loss by flood—make reasonable repairs of a temporary or permanent nature to protect the damaged, insured property from further damage and, to the extent you keep an accurate record of such repair expenditures, the cost of any such repairs—shall be included in determining the amount of loss covered by this policy.

I. Requirements in Case of Loss: Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. Protect the property from further damage;

3. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

4. Within 60 days after the loss, send us a proof loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information.

a.The date and time of the loss,

b. A brief explanation of how the loss happened,

c. Your interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property,

d. The actual cash value of each damaged item of insured property after depreciation is deducted from the cost of replacement of the property (unless the policy's "REPLACEMENT COST PROVISIONS" apply, in which case the replacement cost without allowance for depreciation should be furnished) and the amount of damages sustained,

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property,

f. Details as to any other contracts of insurance covering the property, whether valid or not,

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued,

h. Details as to who occupied any insured building at the time of loss and for what purpose, and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(i) The limits of coverage stated in the policy,

(ii) The cost to repair or replace the damaged property (whatever costs less).

5. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it. In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount; the adjuster is not authorized to approve or disapprove claims or to tell you whether your claim will be approved by us.

6. We may, at your option, waive the requirement for the completion and filing of Proof of Loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages needed by us in order to adjust your claim;

7. Any false statements made in the course of presentment of a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

J. Our Options After a Loss: Options we may, in our

sole discretion, exercise after a loss include the following:

1. *Evidence of Loss*—If we specifically request, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amounts of loss claims, and any written plans and specificationss for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath*-We may require you to show us or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; to, at such reasonable times and places as we may designate, permit us to examine and make extracts and copies of all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*—We may take all or any part of the damaged property at the agreed or appraised value and, also, to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under "I", above.

4. *Adjustment Options*—We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

K. When Loss Payable: Loss is payable within 60 days after you file your proof of loss (or witin 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragaph "M", below. If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

L. Abandonment. You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal. If at any time after a loss, we are unable to agree with you as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to detrmine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to

to the umpire. An award in writing, so itemized, of any two (aprraisers or appraiser and umpire) when filed with us shall determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement costs and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

N. Loss Clause. If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration shall be adjusted as one flood loss.

O. Mortgagee Clause—(Applicable to building items only and effective only when policy is made payable to a morgagee (or trustee) named in the application and declarations form attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this policy, shall be payable to the aoresaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change

in the title or ownership of the property, nor by the occupationof the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, as its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subroga-

tion shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

P. Mortgagee obligations—If the insured fails to render proof of loss, the named morgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

Q. Conditions for filing a lawsuit—You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within twelve (12) months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court for district in which the insured property was located at the time of the loss.

R. Subrogation—Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Article IX—Liberalization Clause

While this policy is in force, should we have adopted any forms, endorsements, rules or regulations by which this policy could be broadened or extended for your benefit by endorsement or substitution of policy form, then, such matters shall be considered to be incorporated in this policy without additional premium charge and shall inure to your benefit as though such endorsement of substitution of policy form had been made.

Article X—What Law Governs

This policy is governed by the flood insurance regulations inssued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. §4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

JEFFREY S. BRAGG,
Administrator, Federal Insurance Administration.

(National Flood Insurance Act of 1969, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), E.O. 12127, dated Mar. 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 9, Delegation of Authority to Federal INsurance Administrator)

[47 FR 19142, May 4, 1982, as amended at 48 FR 39069, Aug. 29, 1983; 48 FR 42818, Sept. 20, 1983; 49 FR 33657, Aug. 24, 1984]

APPENDIX A(2)

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

[Issued Pursuant ot the National Flood Insurance Acts of 1968, or Any Act Amendatory Thereof]

General Property Form

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the Insurer does insure the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss. Without allowance for any increased cost of repair or reconstruction by reason of only ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all *direct loss by or from "flood"* as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood", but not elsewhere.

Assignment of this policy by the Insured is allowed.

The Insurer under this Policy is the Federal Emergency Management Agency.

Persons Insured

The following are insured under this policy:

A. The named insured and legal representatives:

B. Any morgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Definitions

Definitions - As used in this Policy:

"Actual cash value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building" means a walled and roofed structure,

other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a walled and roofed building in the course of construction, alteration or repair and a mobile home on foundation, subject to Paragraph "H" of the provision titled "Property Not Covered". This policy does not cover more than one building.

"Cancellation means that ending of the insurance coverage provided by this policy prior to the expiration date

"Coastal high hazard area" means an area subject to high velocity waters including hurricane wave wash and tsunamis.

"Declarations page" is a computer generated summary of information furnished by the Insured in the application for insurance. The declarations page is a part of this flood insurance policy.

"Direct physical loss by or from flood" means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (building or personal property contents) which is directly and proximately caused by a "flood)) (as defined in this Agreement), while the insured propoerty is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for forty-five days, at another place above ground level or outside of the special flood hazard area to which any of the property shall necessarily be removed in order to protect and preserve it from a flood or from the imminent danger of flood (provided, personal property so removed must be

placed in a fully enclosed building or otherwise reasonably protected form the elements to be insured against loss). The term "Direct Physical Loss by or from Flood" shall not include compensation for loss of use, loss of access, loss of profits or loss resulting from interruption of business, profession or manufacture, allowance for any increased cost of repair or reconstruction as a result of any ordinance or reapir regulating reconstruction or repair, or other economic loss.

"Double-wide mobile home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufacture building an which has axles and wheels used solely fore transportation to the lot or construction site where it is to be assembled as a non-movable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Expense constant" is a flat charge per policy term, paid by the Insured, to defray the Federal Government's policywriting and other expense.

"Expiration date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A-2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A-1 above.

"Policy" means the entire written contract between the Insured and the Insurer, including this printed form, the application and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Perils Excluded

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water except where the property covered has been simultaneously damaged by flood; (3) water moisture or mudslide (i.e., mudflow) damage of any kind resulting

primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto or; (4) seepage backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1)hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government power authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled or due to any act or condition incident to any of the foregoing whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of the flood.

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located caused by the peril insured against.

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save the property from loss resulting from a flood and to preserve the property after a flood; however, when the insurance under this policy covers a building, the reasonable expenses incurred by the Insured for the purpose of sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, for the purpose of saving the buildng due to the imminent danger of a flood loss and preserving the building at the premises after a flood loss, are a covered loss in an amount up to the amount of the minimum building deductible, without the policy's building deductible amount, as provided for herein under "DEDUCTIBLES" being applied to this reimbursement, but being applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph "F" to apply, the following conditions must be met:

(i)The insured property must be in imminent danger of sustaining flood damage; and

(ii) the threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) a general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized legal official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood. Provided, further, that for contents covered herein and subject to the terms of the policy, including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood if the contents so removed are placed in a fully enclosed building or otherwise reasonably protected from the elements.

G. Caused intentionally by the Insured.

H. Which is already in progress as of 12:01 a.m. of the first day of the policy term.

I. From a flood which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the insured premises.

J. Caused by any modification by the Insured to the insured property or the described premises on which the insured property is located which materially increases the risk of flooding.

Property Covered

A. *Building.* When the insurance under this policy covers a building, such insurance shall include additions

and extensions attached thereto; permanent fixtures, machinery and equipment forming a part of and pertaining to the service of the building; personal property of the insured as landlord used for the maintenance or service of the building including fire extinguishing apparatus, floor coverings, refrigerating and ventilating equipment, all while within the described building; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction alteration or repair of such building or appurtenant private structures on the described premises.

B. *Contents.* When the insurance under this policy covers contents, coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this policy covers other than household contents, such insurance shall cover merchandise and stock, materials and stock supplies of every description; furniture, fixtures, machinery and equipment of every description all owned by the insured; improvements and betterments (as hereinafter defined) to the buildng if the insured is not the owner of the buildng and when not otherwise covered; all while within the described inclosed building.

2. When the insurance under this policy covers household contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a residence - except animals, birds, fish, business property, other property not covered under the provisions of this policy, and any property more specifically coverd in whole or in part by the other insurance including the peril insured against in this policy; belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be

liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within the described building.

The Insured, if not the owner of the described building, may apply up to 10% of the amount of insurance applicable to the household contents covered under this item, not as an additional amount of insurance, to cover loss to improvements and betterments (as hereinafter defined) to the described building

The Insured, if an individual condominium unit owner in the described building, may apply up to 10% of the amount of insurance on contents covered under this policy, not as an additional amount of insurance, to cover loss to the interior walls, floors and ceilings that are not otherwise coverd under a condominium association policy on the described building.

The Insurer shall not be liable for loss in any one occurrence for more than $250 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, procelains, rare glass, and bric-a-brac), jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver, platinum and furs and any article containing fur which represents it principal value.

3. When the insurance under this policy covers improvements and betterments, such insurance shall cover the Insured's used interest in improvements and betterments to the described building.

(a) The term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, but

which are not legally subject to removal by the Insured.

(b) The word "lease" wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.

(c) In the event improvements and betterments are damaged or destroyed during the term of this policy by the peril insured against, the liability of the Insurer shall be determined as follows:

(1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the actual cash value of the damaged or destroyed improvements and betterments.

2. If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease.

(3) If repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

C. *Debris Removal.* This insurance covers expense incurred in the removal of debris of or on the building or contents coverd hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Property Not Covered

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records.

B. On and after October 1, 1982, newly constructed and substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boathouses or other similar structures or buildings into which boats are floated; or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building.

E. Aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their furnishings and equipment; and business property.

F. Enclosures, contents machinery, building components, equipment and fixtures located at an elevation lower than the lowest elevated floor of an elevated building (except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls

and anchorage system as required for the support of the elevated building), including a mobile home; finished basement walls, floor, ceilings and other improvement to a basement having its floor subgrade on all sides, and contents machinery, building equipment and fixtures in such basement areas; except that, as to this subparagraph (F), coverage is provided in basement areas below the lowest elevated floor of an elevated building for sump pumps, well-water tanks, oil tanks, furnaces, heat pumps and electrical junction and circuit breaker boxes; and coverage is also provided in basement area and in areas below the lowest elevated floor of an elevated building for stairways and staircases attached to the building which are not separated from the building by elevated walkways.

G. Building and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunciton with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located or placed within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors or that otherwise does not meet the community's flood plain management requirements, unless it is a mobile home on a foundation continuously insured at the same site by the Naitonal Flood Insurance Program, at least since September 30, 1982.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or encosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones V1-V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

K. A building, and its contents, newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

Deductibles

A. With respect to loss to the building and debris removal covered hereunder, Insurer shall be liable for only that portion of the loss in any one occurrence which is inexcess of $500.00.

B. With respect to loss to contents, the reasonable expenses incurred by the Insured pursuant to paragraph "F" of "Perils Excluded," and debris removal coverage hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

C. In lieu of the $500.00 deductible, the amount of

the deductible in "A" and "B," above, shall be the higher amount selected, as an option, by the Insured when applying for this insurance or when raising the deductible by endorsement.

D. In the case of reasonable expenses incurred in the removal of an insured mobile home or personal property from the insured premises away from the peril of flood, the amount of the deductible shall be $50.00

General Conditions And Provisions

A. *Pair and Set Clause.* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud.* This entire policy shall be void and no renewal nor new flood insurance coverage can be issued to the Insured if, whether before or after the loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto (see "E," below). In addition, this entire policy shall be void if the Insured has willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a policy to the Insured based on a premium amount which is less than the premium amount which would have been payable by the Insured if it were not for the misrepresentation of fact (see "J," below).

C. *Other Insurance.* The Insured shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. *Added and Waiver Provision.* The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any other provision or agreement not inconsistent with the pro-

visions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. Voidance: This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. the community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which the insured may receive compensation under the policy, in which case the policy is void from its inception;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured's property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitledd to a pro-rata

refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. The insured or the insured's agent has (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy;

e. The premium submitted is less than $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception.

2. Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discoverd by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; *Provided*, the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage

requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured; the application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

A. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

B. In the event that both building coverage and contents coverage have been requested, the insurer shall determine the precentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and a coverage's proportion of the premium paid is more than sufficient to obtain the amount of insurance requested for that coverage, any excess of that proportion of the total premium will be applied to obtain an additional amount of the other kind of coverge until the amount of insurance requested for the other coverage is obtained;

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

A. The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepre-

sented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connnection with the issuance of the policy, or

B. Provided (ii)A., above, does not apply, the insured remits and the insurer receives the additional premium required to purchase (for the current policy term and the previous policy term if then insured) the limits of coverage for each kind of coverage as was initially requested by the insured withing thirty (30) days from the date the insurer gives the insured written notice of additional premium due, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amount(s) of coverage initially requested. Silence or other failure to remit the additional premium required or non-recipt of such premium by the insurer within thirty (30) days from the date of notice of premium due, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. *Provided, however,* under this subsection "B" as to any mortgagee (or trustee) named in this policy, the insurer shall give a notice of additional premium due

and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thiry (30) days after written notice to the mortgagee (or trustee); Provided, further, the Insurer is under no obligation to send the Insured any written notice of additonal premium due or notice of premium due under this subsection."

F. *Conditions Suspending or Restricting Insurance.* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the insured), when such act or neglect is not within the control of the Insured.

G. *Alterations and Repairs.* Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the even of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

H. *Property of Others (Servants and Guests Only).*

Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. *Liberalization Clause.* If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. *Policy Renewal.* The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declarations Page" which is attached to the policy. The Insurer is under no obligation to send any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured, Mortgagee or Agent of the Insured shall not be deemed to be a waiver of this provision on the Insurer's part. The Insurer is under no obligation to assure that policy changes reflected in endorsements submitted by the Insured or Agent during the policy term and accepted by the Insurer are included in any renewal notice or new policy which is sent. "Policy changes" includes the addition of new coverage (e.g. contents coverage added to a building

coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any such successive policy term is received by the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to "General Condition "E" ", above. The renewal premium payment shall be deemed to be received by the NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days folloiwng the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date.

In all cases, whether the renewal premium payment is received by the NFIP after the expiration date of the last policy term for which the premium was timely received the NFIP and the Insurer shall not be obliged to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such cancellation, termination, policy lapse or policy renewal; *Provided, however*, with respect to any mortgagee (or trustee) name in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

In connection with the renewal of this policy, the Insured will be requested during the policy term to recertify, on a Recertification Questionnaire provided by the Insurer, the rating information used to rate the most recent applica-

tion for or renewal of insurance.

Notwithstanding the above mentioned responsibility of the Insured to submit the appropriate renewal premium in sufficient time to permit its receipt by the NFIP prior to the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the Insurer's business procedure, evidence of the placing of any such notices into the U.S. Postal Service, adressed to the Insured at the address appearing on the Insured's most recent application or other appropriate form (received by the NFIP prior to the mailing of the renewal notice by the Insurer), does, in all respects, for purposes of the NFIP presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice. However, in the event that the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of it being actually and timely received by the Insured prior to the due date for the renewal premium the following procedures shall be followed:

In the event that the Insured or his agent notifies the Insurer, not later than one year after the date on which the payment of the renewal was due, of a non-receipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstances, the Insurer shall mail a second bill providing a revised due date, which shall be thirty days after the date on which the bill is mailed. If the renewal payment is received by such revised due date, the policy

shall be renewed as of the date on which the prior policy would have expired. If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the policy shall remain an expired policy as of the expiration date prescribed on the policy.

K. *Cancellation of Policy or Reduction in Amount of Insurance.* This policy may be cancelled at any time at the request of the Insured, in which case the Insurer shall, upon demand and surrender of this policy, refund the excess of paid premiums above the pro-rata premium earned with retention of the expense constant; provided, however, that the premium paid for the then current policy term shall be fully earned if the Insured retains an interest in the property covered at the location described in the application and declarations form.

The amount of insurance under this policy may be reduced at any time at the request of the Insured, in which case the Insurer shall, upon demand, refund the excess of paid premium above the pro-rata premium earned for the amount of the reduction; provided, however, that the premium paid for the then current policy term shall be fully earned to the extent that the Insured retains an interest in the property covered at the location described in the application and declarations form.

This policy, if it is a policy for a term of three years, may be cancelled at any of its anniversary dates at the request of the Insured, provided, a policy of flood insurance has been obtained or is being obtained in substitution for this policy and the insurer receives a written concurrence in the cancellation from any mortgagee of which the insurer

has actual notice; or the Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be on a short-rate basis.

L. *Loss Clause.* Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

M. *Mortgagee Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy):* Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future morgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; *Provided*, That in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowlege of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel his agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment, and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

N. *Mortgagee Obligations.* If the Insured fails to render proof of loss, the named mortgagee (or trustee),

upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of brining suit.

O. *Loss Payable Clause (Applicable to contents items only).* Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

P. *Requirements in Case of Loss.* The Insured shall give written notice, as soon as practicable, to the Insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

The Insurer may, at its option, waive the requirement for the completion and filing of a Proof of Loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer before the loss can be adjusted.

Any false statements made in the course of presentment of a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

Q. *Appraisal.* In case the Insured and the Insurer shall fail to agree as to the actual cash value of the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterest umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be sleected by a judge of a court of record in the State in which the insured property is located. The

appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

R. *Options.* It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

S. *Abandonment.* There shall be no abandonment of the Insurer of any property.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

T. *When Loss Payable.* Loss is payable within 60 days after the Insured files the proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insurer and the Insured, expressed in writing, or by the filing with the Insurer of an award as provided in paragraph "Q", above. If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of the claim, or exercise the Insured's rights

under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

U. *Action Against the Insurer.* No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

V. *Subrogation.* In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized representative of the Insurer.

GLORIA M. JIMENEZ,
Federal Insurance Adminstrator.

Endorsement 1
Condominium Association Endorsement

If the named Insured on this policy is a condominium association, then at the time of loss by flood the following terms, subject to all other provisions of the policy, will apply:

1. The building coverage of this policy, subject to the stated limits will cover damage to all building items covered under the policy and owned in common by the condominium association members.

2. The building coverage of this policy, subject to the stated limits, is extended to cover damage to all structural items within the Individual Condominium Units, including walls, floors, ceilings, and their related coverings, such as paint, paper, panelling, carpeting, and tile. Also covered are installed appliances for heating, cooling, plumbing and electrical purposes. The structural items may be original installations or replacement or additional items.

3. The building coverage outlined in paragraph 2 above has application only to the extent that the policy's stated limits have not been exhausted under paragraph 1.

4. The policy deductible relating to the building coverage shall be applied against the total damage to all of the buildng's structural elements and not against the covered loss, and shall not be applied separately in the case of each unit sustaining damage.

5. The contents coverage of this policy covers damage, subject to the stated limits, to all contents items

owned in common by the association members and contained in the insured building or removed therefrom in accordance with the policy's terms.

6. The policy deductible relating to contents coverage shall be applied agains the total damage to all contents owned in common by the condominium association members and contained in the insure building or removed therefrom in accordance with the policy's terms and not against the covered loss.

7. Loss under this endorsement shall be adjusted with the condominium association and shall be payable to the insurance trustee of record, as designated by the association.

(National Flood Insurance Act of 1968, as amended (Title XII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41934), Executive Order 12127, dated March 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 9, Delegation of Authority to Federal Insurance Administrator)

[43 FR 2570, Jan. 17, 1978, as amended at 44 FR 32215, June 5, 1979. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19147, May 4, 1982; 48 FR 39069, Aug. 29, 1983; 48 FR 42818, Sept. 20, 1983; 49 FR 33658, Aug. 24, 1984]

42 U.S.C. §4053

Adjustment and payment of claims; judicial review; limitations; jurisdiction

This insurance companies and other insurers which

form, associate, or otherwise join together in the pool under this part may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this chapter and, upon the disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.
Pub.L. 90-448, Title XIII, § 1333, Aug. 1, 1968, 82 Stat. 583.

42 U.S.C. §4072

Adjustment and payment of claims; judicial review; limitations; jurisdiction

In the event the program is carried out as provided in section 4071 of this title, the Secretary shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Secretary of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Secretary, may institute an action against the Secretary on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and

jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

Pub.L. 90-448, Title XIII, § 1341, Aug. 1, 1968, 82 Stat. 584.

44 C.F.R. 59.24

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), or (e) of § 60.3 or paragraph (b) of § 60.4 or §60.5, within six months from the date the Associate Director provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Associate Director shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Associate Director shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Associate Director, he shall, no later than 30 days before the expiration of the original six month period, provide written notice to the community and to the state and assure publication in the *Federal Register* under Part 64 of this subchapter, of the community's loss of eligibility for the sale of flood insurance, such suspension

to become effective upon the expiration of the six month period. Should the community remedy the defect and the Associate Director receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Associate Director. If the Associate Director recieves notice from the State that it has enacted adequate flood management regulations for the community within the notice period, the suspension notice shall be rescinded by the Associate Director. The community's eligibilty shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Associate Director.

(b) A community elegible for the sale of flood insurance which fails to adequately enforce or repeals its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 or §60.5 shall be subject to suspension of its Program eligibility. Under such circumstances, the Associate Director shall grant the community 30 days in which to show cause why it should not be suspended. The Associate Director may conduct a hearing before commencing suspensive action. If a community is to be suspended, the Associate Director shall inform it upon 30 days prior written notice and publication in the *Federal Register* under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Associate Director shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Associate Director upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management regulations

adopted in compliance with the requirements of this subpart, together with evidence of action taken by the community to abrogate, to the maximum extent possible, the action(s) which caused the suspension. In such cases, the Associate Director, in order to evaluate the community's performance under the terms of its submission, may either conditionally reinstate the community's eligibility or withhold reinstatement for a period not to exceed one year from the date of his receipt of the submission.

(c) The Administrator shall promptly notify the servicing agent and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended. Flood insurance shall not be sold or renewed in any suspended community. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.